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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,085	09/08/2004	Jurgen Kassner	FRM-04601	8839
26339	7590	09/08/2006	EXAMINER	
MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY, SUITE 1001 WESTBOROUGH, MA 01581			RUDDOCK, ULA CORINNA	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 09/08/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

10/507,085

Applicant(s)

KASSNER, JURGEN

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/23/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed June 13, 2006. The rejections have been maintained.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102/103***

3. Claims 1-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 19652584 (DE '584). DE '584 discloses a textile lattice for use to reinforce bitumen-bound layers. Intersecting threads consist of man-made fibers that are applied on a thin nonwoven by Raschel knitting (abstract). A bonding substance having an affinity to bitumen treats both the threads and the nonwoven. The underside of the composite of the textile lattice and nonwoven may be provided with a bituminous mastic. The lattice threads are made of polyvinyl alcohol. The lattice threads are surrounded by Raschel locking threads, which the Examiner is equating to Applicant's binding threads.

Although DE '584 does not explicitly teach the claimed ductile yield, that the force absorbed by the polyvinyl alcohol strands increases into the range of the ductile yield in proportion to the value of the strain of the strands, that the two intersecting strands have a ductile yield that corresponds to or is approximately equal to a ductile yield of the bituminous layer, and that the absorbed stress value of the two intersecting strands for a given cross section is approximately proportional to a value of strain in the strands, it is reasonable to presume that these properties are inherent to the invention of DE '584. Support for said presumption is found in the use of like

materials (i.e. polyvinyl alcohol lattice, nonwoven backing, bonding substance, and binding threads). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of a ductile yield between 3-8%, that the force absorbed by the polyvinyl alcohol strands increases into the range of the ductile yield in proportion to the value of the strain of the strands, that the two intersecting strands have a ductile yield that corresponds to or is approximately equal to a ductile yield of the bituminous layer, and that the absorbed stress value of the two intersecting strands for a given cross section is approximately proportional to a value of strain in the strands would obviously have been present once the product of DE '584 is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

***Rejection is maintained.***

#### ***Response to Arguments***

4. Applicant's arguments filed June 13, 2006, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the polyvinyl alcohol threads of DE '584 do not necessarily have the claimed ductile yield range of 3-8%, as evidenced by the *Kuralon Filament by Kuraray Co., Ltd.* document, which discloses a PVA filament yarn having a ductile yield range of 6.7-13.5%. This argument is not persuasive or accurate because the Kuralon document shows the ductile yield range of PVA filament yarns is well within Applicant's range and the ranges overlap (3-8% vs. 6.7-13.5%). Furthermore, Applicant has not shown or proven that the PVA threads of DE '584 do not have the claimed ductile yield range. Therefore, the rejection is maintained.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

UCR *ueh*

*Ula Ruddock*  
**Ula C. Ruddock**  
Primary Examiner  
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